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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL KATZ-LACABE, et al.,

 Plaintiffs,

 v.

 ORACLE AMERICA, INC., a corporation
 organized under the laws of the State of Delaware,

 Defendant.

Case No. 3:22-cv-04792-RS

**DEFENDANT ORACLE
 AMERICA, INC.'S REQUEST FOR
 CONSIDERATION OF DOCUMENTS
 INCORPORATED INTO PLAINTIFFS'
 SECOND AMENDED COMPLAINT**

Judge: Hon. Richard Seeborg

Date: March 14, 2024
 Time: 1:30 p.m.
 Courtroom: 3

Date Action Filed: August 19, 2022
 SAC Filed: November 17, 2023
 Trial Date: Not set

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I. INTRODUCTION

Defendant Oracle America, Inc. has moved to dismiss portions of Plaintiffs' Second Amended Complaint ("SAC"). In support of its motion, Oracle requests that the Court consider the following documents, attached to the Declaration of Purvi G. Patel, incorporated into the SAC by reference:

- **Exhibit A:** A true and correct copy of Oracle Corporation's March 1, 2019= Submission to the Australian Competition and Consumer Commission Digital= Platforms Inquiry (last accessed December 22, 2023), available at <https://www.accc.gov.au/system/files/Oracle%20Corporation%20%28March%202019%29.PDF>;
- **Exhibit B:** A true and correct copy of a June 19, 2020 comment thread posted on= news.ycombinator.com (last accessed December 22, 2023), available at <https://news.ycombinator.com/item?id=23575517#23575760>.

II. EXHIBITS A AND B ARE INCORPORATED BY REFERENCE

When ruling on a motion to dismiss, "courts must consider the complaint in its entirety," including "documents incorporated into the complaint by reference." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018) (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)). A document may be incorporated by reference into a complaint if a plaintiff "refers extensively to the document or the document forms the basis of plaintiff's claim." *Khoja*, 899 F.3d at 1002. As the Court has previously recognized, documents are incorporated by reference where a plaintiff "clearly reference[s]" them "both by name and by link." (See ECF No. 49 at 7 (incorporating by reference exhibits referred to "copious[ly]" in Plaintiffs' Complaint).) **Exhibits A and B** meet this standard.

Plaintiffs rely on select quotations from **Exhibits A and B** repeatedly in the SAC to misleadingly allege that Oracle acted with a tortious purpose in running its ad tech business. (See SAC ¶¶ 98 n.142, 123 n.159, 123 n.162, 124 n.165 (citing and linking to Exhibit A); see also *id.* ¶¶ 133 n.184-85 (citing and linking to Exhibit B).) The Court can and should consider **Exhibits A and B**, which are complete copies of these documents, rather than Plaintiffs' select quotations and paraphrases. *Tellabs*, 551 U.S. at 322.

Oracle does not seek to incorporate these documents by reference "merely [to] create[] a defense to the well-pled allegations in the complaint." (ECF No. 49 at 7 (quoting *Khoja*, 899 F.3d

at 1002).) Rather, Oracle aims to correct Plaintiffs’ misleading characterizations of their contents. *See, e.g., In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 158 n.10 (9th Cir. 2014) (considering a document incorporated by reference where plaintiffs relied on “portions” in their complaint); *In re Autodesk, Inc. Sec. Litig.*, 132 F. Supp. 2d 833, 837-38 (N.D. Cal. 2000) (A “defendant may attach to a 12(b)(6) motion the documents referred to in the complaint to show that they do not support plaintiff’s claim. Thus, the court may consider the full text of a document the complaint quotes only in part.” (citation omitted)). The Court should therefore deem **Exhibits A and B** incorporated by reference.

III. CONCLUSION

For these reasons, Oracle respectfully requests that the Court consider **Exhibits A and B** to the Declaration of Purvi G. Patel incorporated by reference into Plaintiffs’ SAC.

Dated: December 22, 2023

MORRISON & FOERSTER LLP

By: /s/ Purvi G. Patel

Purvi G. Patel

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